The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-113-A June 30, 2005

Petition of Boston Edison Company d/b/a NSTAR Electric for approval of (1) its 2004 Transition Cost Reconciliation Filing, pursuant to G.L. c.164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved by the Department of Telecommunications and Energy in D.P.U./D.T.E. 96-23, and (2) a proposed increase to its standard offer service fuel adjustment.

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FOR: BOSTON EDISON COMPANY
Petitioner

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INTERLOCUTORY ORDER ON RATE WR, M.D.T.E. NO. 135C (Replacement)

I. INTRODUCTION

On December 7, 2004, pursuant to G.L. c.164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998) ("Restructuring Settlement"),[1] Boston Edison Company d/b/a NSTAR Electric ("BECo" or "Company") filed with the Department of Telecommunications and Energy ("Department") its 2004 reconciliation filing, which consists of the reconciliation of transition, transmission, standard offer service, and default service costs and revenues, and proposed updated charges and tariffs to be effective January 1, 2005 ("2004 Reconciliation").[2] The Department docketed this filing as D.T.E. 04-113. One of the tariffs included in the 2004 Reconciliation is the Company's Rate WR tariff, M.D.T.E. No. 135C ("Rate WR").

On December 29, 2004, based upon its review of the 2004 Reconciliation, the Department determined that further investigation was necessary. Boston Edison Company, D.T.E. 04-113, at 2 (2004). Accordingly, the Department allowed the rate changes, subject to reconciliation pursuant to the Department's ongoing investigation.[3] Id.

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[1] The Department incorporates by reference into the record of this proceeding the Restructuring Settlement. 220 C.M.R. § 1.10(3).

[2] The Restructuring Settlement stipulates that, among other things, there be an annual reconciliation process in which any over- or under-collection in BECo's transition costs during the prior year will be reconciled during the following year (Restructuring Settlement at 3, 226-256).

[3] The tariffs subject to review and reconciliation in this proceeding are M.D.T.E. Nos. 102F, 104C, 120C through and including 123C, 130C through and

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On March 15, 2005, pursuant to notice duly issued, the Department conducted a public hearing and procedural conference. The Attorney General filed notice of intervention pursuant to G.L. c. 12, § 11E.

On May 18, 2005, in response to an information request, BECo informed the Department that the Company mistakenly failed to compute Rate WR in accordance with the formula prescribed in a settlement between the Massachusetts Water Resources Authority ("MWRA"), the Attorney General and BECo, approved in Boston Edison Company, D.T.E. 01-108-A (2002) (Exh. DTE-1-13).[4] On June 10, 2005, BECo filed in this proceeding a new, revised version of Rate WR, M.D.T.E. No. 135C (replacement) ("Revised Rate WR") incorporating changes to applicable rates with a proposed effective date of January 1, 2005 (Exh. D.T.E.-1-13(c)). On June 16, 2005, the Department conducted a technical conference. On June 20, 2005, MWRA filed comments on the Revised Rate WR. On June 24, 2005 BECo responded to MWRA's comments.

II. DESCRIPTION OF REVISED RATE WR

A. Background of Rate WR

Rate WR was first established as a separate rate class to serve MWRA in the Electric Power Supply Agreement between BECo and MWRA approved by the Department in Harbor

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[3](…continued)
including 135C, and 140C through and including 142C, for service on and after January 1, 2005.

[4] On its own motion, the Department moves into the record of this proceeding BECo's response to information request DTE-1-13, including all supplements. This exhibit is marked as Exh. DTE-1-13.

Electric Company and Boston Edison Company, D.P.U. 90-288 (1991). The Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 ("Restructuring Act"), specifically required that MWRA be eligible for the ten and 15 percent rate reductions. G.L. c. 164, § 1B(b). However, BECo's Restructuring Settlement, approved in D.P.U./D.T.E. 96-23, did not include a ten percent reduction for MWRA.[5] Thus, the Department directed the Company to redesign Rate WR consistent with the rate reductions required by the Restructuring Act. D.P.U./D.T.E. 96-23, at 35-38.

Due to the unique load characteristics of MWRA's Deer Island facilities and the corresponding relatively low average unit cost to serve, the Department directed BECo to partially unbundle Rate WR to avoid negative charges. Id. at 36-37. Only the component charges for standard offer service, energy efficiency, and renewables were separately identified in the tariff. The other charges for distribution, transition, and transmission remained bundled. Thus, MWRA was not being charged a specific per kilowatthour ("KWH") transition charge.

In Boston Edison Company, D.T.E. 01-108-A (2002), the Company, MWRA and the Attorney General entered into a settlement that established a formula which provided MWRA's responsibility for transition costs ("MWRA Settlement") (Exh. D.T.E. 1-13(a)). The MWRA Settlement provided a ten year phased-in increase in the proportion of the uniform transition cost charge to be included in Rate WR (id. Att. C). From January 1, 2005 through December 31, 2010, Rate WR would be unbundled to include a separate transition charge,

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[5] The Department incorporates by reference into the record of this proceeding the Restructuring Settlement. 220 C.M.R. § 1.10(3)

whose price would be fixed each year at a specified percentage of the uniform transition charge (Exh. D.T.E. 1-13(a), at § 2.12, Att. C).[6]

B. Revised Rate WR

In calculating Rate WR, the Company stated that it did not properly apply the Rate WR transition charge factor prescribed by the MWRA Settlement and submitted the Revised Rate WR to correct this error (Exh. D.T.E. 1-13(c)). The Company explained that

> paragraph 2.11 of the MWRA Settlement sets forth the method of computing the Transition Cost Charge for Rate WR through 2004. The formula was to change beginning in 2005, but the Company inadvertently continued to reflect the provisions that applied to years 2002 through 2004

(Exh. IR-DTE-1-13).

The Company applied the proper transition charge factor for 2005 and calculated that, under Revised Rate WR, it would collect an additional $218,761 for January through May 2005 than would otherwise be collected pursuant to Rate WR (Exh. DTE-1- 13(d)).[7]

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[6] The MWRA Settlement resolved the issue of transition cost responsibility retroactively to November 1, 2001 (Exh. D.T.E. 1-13(a)). See D.T.E. 01-108-A at 6.

[7] Specifically, the MWRA Settlement provided that, for the years 2005 through 2007, the Rate WR transition charge factor will be equal to the average of the ratio for each year from 2002 through 2004 of (a) the total amount of transition costs that would have been paid under Rate WR had the Rate WR transition cost adjustment during those three years been equal to three fourths (75 percent) of the difference between the Rate WR implicit transition cost charge and (b) the total amount of transition costs that would have been paid under Rate WR during those same years had Rate WR reflected the uniform transition charge. For the years 2008 through 2010, the Rate WR transition charge factor will be equal to the average of the ratio for each year from 2002 through 2004 of (a) the total amount of transition costs that would have been paid under Rate

(continued…)

III. SUMMARY OF COMMENTS

A. MWRA

MWRA agrees that the Revised Rate WR is consistent with the provisions of the MWRA Settlement(MWRA Comments at 2). However, MWRA argues that the Company's proposal to have the Revised Rate WR be applied retroactively to January 1, 2005 is prohibited under Massachusetts law (id. at 5, citing, Boston Edison Company v Department of Public Utilities, 375 Mass 1, 6 (1978); Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass 625, 637 (2004)). MWRA states that the rule against retroactive ratemaking is a corollary of the "filed rate doctrine," which forbids utilities form charging any rate other than the then effective rate on file with the relevant regulatory authority and the statutory construction of G.L. c. 164, § 94 (MWRA Comments at 5, citing 440 Mass. 625).

MWRA notes that there are limited exceptions to the rule against retroactive ratemaking that apply to specific circumstances, such as reconciling cost recovery adjustments and claims for overcharges resulting from billings under the wrong tariff for the service provided, but added that those circumstances do not apply here (MWRA Comments at 6, citing, 440 Mass 625, 638; Consumers Organization for Fair Energy Equality, Inc. v. Department of Public

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[7](…continued)

WR had the Rate WR transition cost adjustment during those years been equal to seven eighths (87.5 percent) of the difference between the Rate WR implicit transition charge and (b) the total amount of transition costs that would have been paid under Rate WR during those same years had Rate WR reflected the uniform transition charge (Exh. D.T.E. 1-13(a) at § 2.12, Att. C).

Utilities, 368 Mass 18, at 27 (1975); Metropolitan District Commission v Department of Public Utilities, 352 Mass 18, 27 (1967)). MWRA argues that the transition cost component is to be calculated as a fixed percentage of the uniform transition cost charge, and there is no reconciliation of the revenues received to any particular levels of costs (MWRA Comments at 7).

B. BECo

The Company argues that the Department's Order in D.T.E. 01-108-A approving the MWRA Settlement establishes the proper legal authority for the Company's Revised Rate WR (BECo Reply at 6). BECo posits that neither the filed-rate doctrine nor the rule against retroactive ratemaking applies to the facts of this case (id.).

The Company notes that MWRA explicitly agreed to a phase-in of the transition charge it would pay each year (id. at 3). BECo takes the position that MWRA must honor the terms of the MWRA Settlement (id.). BECo concludes that the doctrine of retroactive ratemaking does not apply where the parties enter into pre-existing agreements on rates (id., citing Texas Eastern Transmission Corp. v. FERC, 102 F3d 174, at 183-184(5th Cir 1982); Hall v. FERC, 691 F.2d 1184, 1192 (5th Cir. 1982); City of Piqua v FERC, 610 F.2d 950, 954-955(D.C. Cir 1979).

The Company also argues that limitations on retroactive ratemaking do not apply to non base rates (BECo Reply at 4-5, citing Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass. 625, 637-636 (2004)). BECo states that the transition charge, the subject of this dispute, is a reconciling, non-base rate

pursuant to G.L. c. 164, § 1A et seq. (BECo Reply at 4-5). The Company states that Rate WR was submitted to the Department in this docket as part of the Company's 2004 Reconciliation, which is still an open investigation (id. at 5-6). The Company argues that retroactive ratemaking is not implicated in this case where the Department has not yet issued a final order (BECo Reply at 6, citing Boston Gas Company, D.T.E. 96-50-D at 8-9 (2001)).

IV. ANALYSIS AND FINDINGS

In reviewing annual transition cost reconciliation filings, the Department must ensure that the proposed reconciliations are consistent with or substantially comply with the Restructuring Act, the company's approved restructuring plan, applicable law, and Department precedent.[8] The Department reviews BECo's annual transition cost filings to ensure that they comply with the provisions of G.L. c. 164, §§ 1A, 1G, and 1H. 220 C.M.R. § 11.03(4).

The Department's Order in D.T.E. 01-108-A, among other things, prescribed a formula to determine MWRA's responsibility for transition costs. The Department found that the MWRA Settlement's phased-in increase of transition charges would benefit the Company's other retail customers because those increases in transition charges billed to MWRA will correspondingly lower the amount of the transition costs to be recovered from BECo's other retail customers. D.T.E. 01-108-A at 9.

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[8] Transition costs are also known as stranded costs. Stranded costs are embedded costs that remain after accounting for maximum possible mitigation of such costs. See D.P.U./D.T.E. 96-23, at 7. BECo's transition charge is intended to recover, on a fully reconciling basis, all of the Company's transition costs, pursuant to the BECo's Restructuring Settlement.

The record demonstrates that in calculating Rate WR for 2005, BECo failed to properly apply the formula prescribed by the MWRA Settlement to calculate MWRA's 2005 transition cost obligation (Exh. D.T.E. 1-13; MWRA Comments at 2). Incorrect application of this formula to Rate WR would result in BECo's other ratepayers being responsible for transition costs that have been previously determined to be MWRA's responsibility. G.L. c. 164, §§ 1A and 1G; 220 C.M.R. § 11.03(4); D.T.E. 01-108-A at 9.

The Company filed Revised Rate WR to correct this error. Upon review of Revised Rate WR, we find that Revised Rate WR is consistent with the MWRA Settlement. Based upon our review of the entire record in this proceeding, and for the reasons stated above, we find that Revised Rate WR substantially complies with the Restructuring Act, the Restructuring Settlement, and is consistent with Department precedent and the public interest.

MWRA argues that the limited exceptions to the rule against retroactive ratemaking do not apply here. We disagree.

The filed rate doctrine does not apply where the parties enter into preexisting agreements on proposed rates. Texas Eastern Transmission Corporation v. Federal Energy Regulatory Commission, 102 F.3d 174, 183-184 (1996) (5th Cir.). Such agreements provide the requisite notice, and change what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional and subject to later revision. Id. Where two parties agree on a rate schedule and the effective date for the new contract, the negotiated change is

not retroactive but prospective from the date of the contract. City of Piqua v Federal Energy Regulatory Commission, 610 F.2d 950, 954 (1979) (DC Cir).[9]

The Company, MWRA, and the Attorney General agreed to establish a formula that set future transition costs payment obligations that are properly incorporated into Revised Rate WR, and required by G.L. c. 164, § 1G(3) and 220 C.M.R. § 11.04(4). D.T.E. 01-108-A. Our finding above that Revised Rate WR is consistent with the MWRA Settlement does not adjust the formula set in D.T.E. 01-108-A. That is, the formula established in D.T.E. 01-108-A itself is a fixed "rate" that we are not changing. See Fitchburg Gas and Electric Light Company v. Department of Telecommunications and Energy, 440 Mass 625, 637 (2004) (Retroactive ratemaking rule does not apply to the operations of self-reconciling flow-though mechanism like cost of gas adjustment clause); Blackstone Gas Company, D.P.U. 511, at 10-11 (1981) (As long as formula remains fixed, mathematics resulting from formula's operation do not constitute "general increase in rates, prices and charges").

We conclude that Revised Rate WR incorporates a rate change and effective date agreed upon by MWRA, the Company and the Attorney General pursuant to a formula approved in

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[9] The filed rate doctrine generally holds that "once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively." Texas Eastern Transmission Corporation 102 F.3d 174, 183-184. With respect to base rates, "a rate increase may not be awarded retroactively as a matter of law." Boston Edison Company v. Department of Public Utilities, 375 Mass 1, 6 (1978). Further, the Department "is not authorized to order reimbursement of collected charges to customers." Lowell Gas Co. v. Attorney General, 377 Mass 37, 45 (1979).

D.T.E. 01-108-A. The transition cost reconciliation mechanism established in D.P.U./D.T.E. 96-23, the cost of gas adjustment clause in 220 C.M.R. §§ 6.00 et seq., and the fuel charge mechanism pursuant to G.L. c. 164 § 94G (repealed by the Restructuring Act), have all operated retroactively. Rate WR, as well as all the other rates at issue in this proceeding, were allowed "subject to review and reconciliation" as part of BECo's annual transition cost reconciliation proceedings. D.T.E. 04-113 (2004); Boston Edison Company, D.T.E. 03-117 (2003); Boston Edison Company, D.T.E. 02-80A (2002); Boston Edison Company, D.T.E. 00-82 (2000); Boston Edison Company, D.T.E. 99-107 (1999); Boston Edison Company, D.T.E. 98-111 (1998). Following this review, all costs and revenues continue to be subject to adjustment upon the issuance of a final order in these proceedings. Boston Edison Company, D.T.E. 03-117-A (Phase II) (2004); Boston Edison Company, D.T.E. 02-80A (Phase II) (2003); Boston Edison Company, D.T.E. 01-78 (Phase II) (2002); Boston Edison Company, D.T.E. 00-82 (Phase II) (2001); Boston Edison Company, D.T.E. 99-107-A (2001); Boston Edison Company, D.T.E. 98-111-A (2000). As such, Revised Rate WR does not retroactively establish a rate. Accordingly, we approve Revised Rate WR. In order to mitigate any adverse rate impacts to MWRA, we direct the Company to establish a payment plan with MWRA similar to the plan that MWRA and the Company agreed to in the MWRA Settlement. See D.T.E.01-108-A at 6-7.

V. ORDER

After due notice, review and consideration, it is therefore

ORDERED: that Massachusetts Water Resources Authority Rate WR, tariff M.D.T.E. No. 135C (Replacement), filed in this proceeding on , is ALLOWED; and it is

FURTHER ORDERED: That Boston Edison Company follow all other directives in this Order.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Judith F. Judson, Commissioner